REMARKS

Applicants have cancelled claims 1, 3, 4, 7, 15-21, 26, 28, 29, 36 - 39 because the claims were directed to non-elected species or were repetitive.

Applicants have added new claims 49-82 which cover various combination vaccines and methods using the combination vaccines, the combination vaccines having inactivated bovine rotavirus strains, one or more inactivated bovine coronavirus strains, and at least one vaccinal bacteria. These claims were elected by Applicants in response to the Restriction Requirement issued on June 27, 2003. Support for these new claims can be found throughout the Specification.

Pending claims are now claims 2, 5, 8-14, 22-25, 27, 30-35, 37, 38, 40-82.

In the Office Action dated October 1, 2003, the Examiner rejected the Specification and Claims 5, 7, 8, 10-14, 22-24, 31, 32, 34, 35, and 40-48 under 35 U.S.C. § 112 first paragraph because the Examiner believed that Applicants have failed to enable the "novel viral strains". Specifically, the Examiner indicated that the viral strains "...had to be obtainable by repeatable methods set forth in the specification or otherwise be readily available to the public."

On page 5 of the Specification, last paragraph, it is noted that coronavirus strain Mebus was obtained from ATCC and that the ATCC Accession Number is VR-874. Enclosed is a copy of print out from ATCC's website confirming this information. It is believed that because the virus strains are publicly available from ATCC, Applicants do not need to deposit a sample of the virus strains with ATCC nor submit a Declaration of Availability to the USPTO.

Also on page 5 of the Specification, last paragraph, it is noted that two of the bovine rotavirus strains were obtained from and are available from the Animal Disease Research and Diagnostic Laboratory, Brookings, South Dakota. Dr. David Benfield is maintaining the viral strains at this institute. The third strain was obtained from and is available from Texas A & M and being maintained by Dr. Gerald Woode at that institution. Applicants are in the process of submitting, per the terms of the Budapest Treaty, these bovine rotavirus strains which Applicants used in their invention and described in the Specification to ATCC and will submit the accession number and Statement of Availability upon completion of that process. The Applicants are also depositing, per the terms of the Budapest Treaty, the strains of *E. coli* that Applicants used in their invention and described in the Specification to ATCC and will submit the accession number and Statement of Availability upon completion of that process. The

Applicants will also amend the specific claims and Specification that need amending regarding these deposits upon receipt of the information from ATCC.

During Applicants' Response to the Restriction Requirement (dated August 26, 2003), Applicants amended the claims and Specification to indicate the ATCC accession number for *Clostridium perfringens* Type C. Applicants also submitted a Statement of Availability for *C. perfringens* and a copy of the ATCC receipt. Applicants are enclosing a copy of this Statement of Availability for *C. perfringens* and a copy of the ATCC receipt for the Examiner's convenience.

The Examiner rejected Claims 1, 2, 6, 22, 25-27, 44, 47, and 48 under 35 U.S.C. § 102(b) as being anticipated by Mostl et al. Examiner remarked that Mostl et al. teaches a vaccine containing inactivated bovine rotavirus and inactivated bovine coronavirus with an oil adjuvant as well as Scourguard 3® which, according to Mostl et al., contains live attenuated bovine rotavirus and live attenuated bovine coronavirus with inactivated *E. coli* K99.

For anticipation to occur under 35 U.S.C. § 102(b), every element and limitation of the claimed invention must be found in a single prior art reference (*Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383, 58 U.S.P.Q.2d 1286, 1291 (Fed. Cir. 2001); *Scripps Clinic & Research Foundation v. Genetech, Inc.*, 927 F.2d 1565, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). In this particular instant, the rejection under 35 U.S.C. § 102(b) is inappropriate because not every element and limitation of the claimed invention is found in Mostl. et al.

Mostl et al. discloses two vaccines, Scourguard 3®, and a second vaccine produced and used by Mostl et al. which contained inactivated bovine rotavirus and inactivated bovine coronavirus with an oil adjuvant. Turning to second vaccine generated by Mostl et al., the Applicants' invention differs from this disclosed second vaccine because Applicants' invention contains at least three components: (1) a plurality of inactivated bovine rotaviruses, (2) at least one inactivated bovine coronavirus, and (3) vaccinal bacteria. Applicants' invention contains different elements and limitations than vaccine disclosed in Mostl et al.; it has a vaccinal bacteria and more than one inactivated bovine rotaviruses. Concerning Scourguard 3®, according to Mostl et al., Scourguard 3® contains live attenuated bovine rotavirus and live attenuated bovine coronavirus plus inactivated *E. coli* K99. Again Applicants' invention differs from Scourguard 3® because Applicants use inactivated viruses, not live attenuated viruses.

Because of the differences between the two vaccines disclosed in Mostl et al. and Applicants' invention, the rejection under § 102(b) is inappropriate. Applicants kindly request that the Examiner withdraw this rejection.

The Examiner also rejected Claims 23, 24, 40-43, and 46 under 35 U.S.C. § 103(a) as being unpatentable over Mostl et al. The Examiner argued that while Mostl et al. did not teach